

ASSEMBLY BILL

No. 2941

**Introduced by Committee on Water, Parks and Wildlife
(Machado (Chair), Calderon, Cardoza, Florez, Kuehl,
Strom-Martin, Thomson, and Wayne)**

April 6, 2000

An act to amend Sections 391, 5521.5, 7655, 8022, 8150.5, 8150.7, 8411, 8412, 8550.5, 8552.8, 11019, 12002.3, 12006.6, 12009, and 12157 of, and to repeal Sections 8150.8, 8150.9, 8151, 8152, 8410, 8413, 8414, 8415, and 8664.65 of, the Fish and Game Code, relating to commercial fishing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2941, as introduced, Committee on Water, Parks and Wildlife. Commercial fishing.

(1) Existing law requires approval by the Attorney General in order for the Department of Fish and Game to enter into a reciprocal agreement with a federal or county agency or an agency in another state to exchange records and other information regarding those suspected of a violation of the Fish and Game Code.

This bill would delete the requirement that the Attorney General approve those reciprocal agreements.

(2) Existing law makes it unlawful to take abalone for commercial purposes in certain areas, as specified.

This bill would enact a rebuttable presumption that a person who takes or possesses more than 12 abalone possesses the abalone for commercial purposes.

(3) Existing law requires that nominations for the Pacific Fishery Management Council include representatives from several fisheries, including the anchovy fishery.

This bill would replace representation on the council for the anchovy fishery with representation from the coastal pelagic species fishery.

(4) Existing law generally provides that information filed with the department pursuant to the regulation of commercial fishing is confidential.

This bill would permit the department to release this information to any federal agency responsible for fishery management activities, to any federal, state or local agency for the purpose of law enforcement, or pursuant to a court order.

(5) Existing law provides that sardines may only be taken or possessed on any vessel in conformance with the permit system developed by the department, with certain exceptions as specified.

This bill would delete the exception for sardines taken incidentally to other fishing operations.

(6) Existing law requires that the sardine and Pacific mackerel resource be maintained at certain populations, as specified.

This bill would repeal various statutory requirements and would, instead, require that the sardine and Pacific mackerel resource be managed to maximize sustained harvest, and would require the department to do so in conformance with the recommendations of the Pacific Fishery Management Council as adopted by the Secretary of Commerce.

(7) Existing law provides for the issuance of permits to take herring with gill and round haul nets.

This bill would delete the provision providing for the issuance of a license to take herring with round haul nets.

(8) Existing law provides certain penalties for any person convicted of taking or possessing more than 36 abalone in a specified area of District 10.

This bill would delete the requirement that a person take or possess 36 or more abalone in order for those penalties to apply and in so doing would impose a state-mandated local program.



(9) Existing law prescribes various penalties for taking or possessing abalone in specified areas, including imprisonment in the county jail for not more than one year.

This bill would increase the penalty to not more than 3 years imprisonment in the state prison.

(10) Existing law requires that upon the conviction of a person for violating, among other things, provisions relating to endangered or protected species, the judge in the proceeding must order the forfeiture of any device, apparatus, or automobile used in committing the offense.

This bill would require a judge to order the forfeiture of those items in a proceeding where a person is convicted of violating certain provisions, relating to the taking, possessing, or landing of abalone.

(11) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 391 of the Fish and Game Code
2 is amended to read:
3 391. The department, ~~subject to the approval of the~~
4 ~~Attorney General,~~ may enter into reciprocal agreements
5 ~~with exchange or release to~~ any appropriate federal,
6 ~~state, or local or county agencies,~~ agency or agencies in
7 other states, for purposes of ~~exchanging information on~~
8 ~~fish and wildlife law enforcement, including, but not~~
9 ~~limited to, the records of any person or persons involved~~

~~in, or suspected of any involvement in, a violation of this code or any regulation adopted pursuant thereto any information collected or maintained by the department under any provision of this code or any regulation adopted pursuant to this code. This information shall be confidential, and the records shall not be public records, except when used for the purpose of prosecuting any person or persons for a violation of any fish and game law or regulation.~~

SEC. 2. Section 5521.5 of the Fish and Game Code is amended to read:

5521.5. (a) In addition to the moratorium imposed by Section 5521, and notwithstanding any other provision of law, it is unlawful to take abalone for commercial purposes in District 6, 7, 16, 17, or 19A, in District 10 north of Point Lobos, or in District 20 between Southeast Rock and the extreme westerly end of Santa Catalina Island.

(b) *There shall be a rebuttable presumption, affecting the burden of producing evidence, that a person who is required to obtain a license pursuant to Section 7145 and who takes or possesses more than 12 individual abalone possesses the abalone for commercial purposes.*

SEC. 3. Section 7655 of the Fish and Game Code is amended to read:

7655. (a) It is the policy of the State of California that the state be represented on the Pacific Fishery Management Council by representatives of those fisheries directly subject to the fishery management plans of the council. Special emphasis shall be made on the nominations and appointments to the Pacific Fishery Management Council for a California commercial salmon troll fisherman. In addition to a commercial salmon troll fisherman, in order to assure a balanced representation on the Pacific Fishery Management Council, nominations shall also include representatives from the seafood processing industry, the commercial passenger carrying fishing industry, the groundfish fishery, and the ~~anchovy~~ *coastal pelagic species* fishery.

(b) When the Governor nominates persons for any seat on the Pacific Fishery Management Council, those

1 individuals shall be knowledgeable of California's fishery
2 resources and its fishing industry and needs. Further, the
3 nominations shall be made after consultation with fishery
4 organizations whose members are directly affected by
5 the actions of the ~~Pacific Fishery Management Council~~
6 *council*.

7 SEC. 4. Section 8022 of the Fish and Game Code is
8 amended to read:

9 8022. (a) The receipts, reports, or other records filed
10 with the department pursuant to Article 2 (commencing
11 with Section 7700) to Article 7.5 (commencing with
12 Section 8040), inclusive, and the information contained
13 therein, shall, except as otherwise provided in this
14 section, be confidential, and the records shall not be
15 public records. Insofar as possible, the information
16 contained in the records shall be compiled or published
17 as summaries, so as not to disclose the individual record
18 or business of any person.

19 (b) *Notwithstanding any other provision of law, the*
20 *department may release the confidential information*
21 *described in subdivision (a) to any federal agency*
22 *responsible for fishery management activities, provided*
23 *the information is used solely for the purposes of*
24 *enforcing fishery management provisions and provided*
25 *the information will otherwise remain confidential. The*
26 *department may also release this information in*
27 *accordance with Section 391 or pursuant to a court order.*

28 SEC. 5. Section 8150.5 of the Fish and Game Code is
29 amended to read:

30 8150.5. (a) Sardines may not be taken or possessed on
31 any boat, barge, or vessel except pursuant to Section
32 8150.7.

33 ~~(a) However, loads or lots of fish may contain 15~~
34 ~~percent or less by weight of sardines which are taken~~
35 ~~incidentally to other fishing operations and which are~~
36 ~~mixed with the other fish in the load or lot.~~

37 (b) This section does not prohibit the possession ~~and~~ *or*
38 use of sardines imported into this state under a bill of
39 lading identifying the country of origin.

1 (c) Imported sardines may be used for dead bait under
2 regulations ~~as adopted by the commission~~ ~~may prescribe~~.

3 ~~(d) Subdivision (a) is operative only when Section~~
4 ~~8151 is not operative. Subdivisions (b) and (c) are~~
5 ~~operative and apply regardless of whether subdivision~~
6 ~~(a) or Section 8151 is operative.~~

7 SEC. 6. Section 8150.7 of the Fish and Game Code is
8 amended to read:

9 8150.7. It is the intent of the Legislature that the
10 sardine resource be ~~rehabilitated~~ *managed with the*
11 *objective of maximizing the sustained harvest. The*
12 *department shall manage the sardine resource in*
13 *conformance with the federal fishery regulations as*
14 *recommended by the Pacific Fishery Management*
15 *Council and as adopted by the Secretary of Commerce.*
16 ~~During the process of rehabilitation a small fishery shall~~
17 ~~be allowed once the spawning population has reached~~
18 ~~20,000 tons as determined by the department during the~~
19 ~~first 60 days of each calendar year. As the spawning~~
20 ~~population increases, in excess of 20,000 tons, the seasonal~~
21 ~~quota may also be increased but at such a rate as to allow~~
22 ~~the continued increase in the spawning population. This~~
23 ~~process shall continue with the objective of maximizing~~
24 ~~the sustained harvest.~~

25 ~~When the department determines that the estimated~~
26 ~~spawning population of northern stocks of sardines has~~
27 ~~reached 20,000 tons, it shall establish a~~
28 ~~1,000-ton-per-season quota which may be taken under~~
29 ~~permits issued by the department.~~

30 ~~The department shall keep records of the catch and~~
31 ~~when it appears that the 1,000-ton limit will be reached,~~
32 ~~it shall notify all permit holders of the date when such~~
33 ~~limit will be reached and after which no sardines may be~~
34 ~~taken, and shall notify, by certified mail, all permittees of~~
35 ~~such closure.~~

36 ~~The department shall increase the quota beyond 1,000~~
37 ~~tons when, consistent with the intent of this section, it~~
38 ~~determines that an increased quota is warranted.~~

39 SEC. 7. Section 8150.8 of the Fish and Game Code is
40 repealed.

1 ~~8150.8. Any sardine quota established by the~~
2 ~~department under Section 8150.7 shall be allocated in the~~
3 ~~following manner into two quotas, one for southern~~
4 ~~California and one for northern California, with the~~
5 ~~boundary division at San Simeon Point in San Luis Obispo~~
6 ~~County. The allocation shall be as follows:~~

7 ~~(a) One-third of the quota shall be reserved for~~
8 ~~fishermen landing their catches north of San Simeon~~
9 ~~Point.~~

10 ~~(b) Two-thirds of the quota shall be reserved for~~
11 ~~fishermen landing their catches south of San Simeon~~
12 ~~Point.~~

13 SEC. 8. Section 8150.9 of the Fish and Game Code is
14 repealed.

15 ~~8150.9. Notwithstanding Section 8150.8 or any other~~
16 ~~provision of this article governing the quota of sardines,~~
17 ~~the department shall determine on or before October 15~~
18 ~~each year if there is any portion of the quota for the taking~~
19 ~~of sardines established pursuant to Section 8150.7 that has~~
20 ~~not been taken on or before September 30, and if the~~
21 ~~department determines that a portion of the quota has~~
22 ~~not been taken the department shall reallocate the total~~
23 ~~remaining amount on or before October 15 with one-half~~
24 ~~of the amount allocated for fishermen landing their~~
25 ~~catches north of San Simeon Point and one-half allocated~~
26 ~~for fishermen landing their catches south of San Simeon~~
27 ~~Point. Except for provisions governing the quota, all~~
28 ~~other provisions of law regulating the portion so~~
29 ~~reallocated shall apply to the reallocated portion.~~

30 SEC. 9. Section 8151 of the Fish and Game Code is
31 repealed.

32 ~~8151. (a) Notwithstanding Section 8150.5, the~~
33 ~~tolerance for sardines taken incidentally to other fishing~~
34 ~~operations and mixed with other fish in a load shall be 25~~
35 ~~percent if, using the mackerel fishery as an indicator, the~~
36 ~~overall percentage of incidentally taken sardines mixed~~
37 ~~with jack mackerel and Pacific mackerel during the~~
38 ~~preceding month exceeded 5 percent. Thereafter, the~~
39 ~~tolerance shall increase by additional 10-percent~~
40 ~~increments whenever the overall percentage of~~

~~1 incidentally taken sardines during the preceeding month
2 exceeded one third of the previously established
3 tolerance. The overall percentage of incidentally taken
4 sardines shall be determined monthly by dividing the
5 weight of sardines taken incidentally with jack mackerel
6 and Pacific mackerel by the weight of all jack mackerel,
7 Pacific mackerel, and sardines taken by the mackerel
8 fishery.~~

~~9 (b) If the overall percentage of incidentally taken
10 sardines has been less than one-fourth of the tolerance in
11 effect during the preceeding three month period and the
12 tolerance has not been adjusted during this three-month
13 period, the tolerance for incidentally taken sardines shall
14 be decreased by deducting one 10-percent increment
15 from the tolerance.~~

~~16 (c) Under no circumstances shall the tolerance be
17 more than 45 percent or less than 15 percent.~~

~~18 (d) The department shall notify sardine
19 permitholders, by mail, of any change in the status of the
20 tolerance for incidentally taken sardines.~~

~~21 (e) The commission shall hold public hearings to
22 consider the implementation of this section and shall
23 report annually to the Legislature on the status of the
24 sardine resource and may also make recommendations to
25 the Legislature regarding this section or its
26 implementation.~~

~~27 SEC. 10. Section 8152 of the Fish and Game Code is
28 repealed.~~

~~29 8152. In addition to any other provision of this article,
30 sardines may be taken and possessed for live bait purposes
31 at any time.~~

~~32 SEC. 11. Section 8410 of the Fish and Game Code is
33 repealed.~~

~~34 8410. The Pacific mackerel season is from July 1
35 through June 30.~~

~~36 SEC. 12. Section 8411 of the Fish and Game Code is
37 amended to read:~~

~~38 8411. It is the intent of the Legislature that the Pacific
39 mackerel resource in waters north of Punta Eugenia, Baja
40 California, Mexico, be maintained at a total population~~

~~above 20,000 tons be managed with the objective of maximizing the sustained harvest. The department shall manage the Pacific mackerel resource in conformance with the federal fishery regulations as recommended by the Pacific Fishery Management Council and as adopted by the Secretary of Commerce.~~

~~“Total population” means Pacific mackerel age one and over as of July 1 of each year as determined by the department.~~

~~The department shall study the Pacific mackerel resource and fishery for biological and management purposes. On or before February 1 of each year, the department shall prepare a report on the status of the Pacific mackerel resource and fishery.~~

~~The report shall include, but shall not be limited to, an estimate of the size of the total population of Pacific mackerel for the current season and an estimate of the expected size of the total population of Pacific mackerel at the beginning of the next season.~~

~~SEC. 13. Section 8412 of the Fish and Game Code is amended to read:~~

~~8412. (a) If the department determines that the total population of Pacific mackerel is less than 20,000 tons, a moratorium shall be in effect and Pacific mackerel shall not be taken or possessed, except that loads of fish may contain 18 percent or less by number of Pacific mackerel taken incidentally to other fishing operations.~~

~~(b) If the department determines that the total population of Pacific mackerel is 20,000 tons or greater, but less than 150,000 tons, the director shall establish a season quota equal to 30 percent of the Pacific mackerel in excess of 20,000 tons.~~

~~(c) If the department determines that the total population of Pacific mackerel is 150,000 tons or greater, there shall not be a season quota limitation on the take of Pacific mackerel.~~

~~(d) Any season quota authorized under this section or Section 8414 Pacific mackerel may be taken under a revocable nontransferable permit permit issued by the department to boat owners or operators, under~~

1 conditions prescribed by the department. ~~A portion of a~~
2 ~~season quota may be allocated for landings from the~~
3 ~~waters of the Pacific Ocean north of Point Sal.~~

4 SEC. 14. Section 8413 of the Fish and Game Code is
5 repealed.

6 ~~8413. The department shall keep records of the catch~~
7 ~~of Pacific mackerel, including Pacific mackerel taken and~~
8 ~~landed incidentally with other species of fish. The~~
9 ~~department shall estimate from the current trend of~~
10 ~~catches the date on which the season quota will be taken~~
11 ~~and, at least 48 hours prior thereto, shall publicly~~
12 ~~announce that date as the closing date of the season.~~

13 SEC. 15. Section 8414 of the Fish and Game Code is
14 repealed.

15 ~~8414. During any portion of the season, the director~~
16 ~~may increase or decrease the season quota established~~
17 ~~under Section 8412.~~

18 SEC. 16. Section 8415 of the Fish and Game Code is
19 repealed.

20 ~~8415. After the season quota is taken, the director may~~
21 ~~establish a tolerance for Pacific mackerel taken mixed~~
22 ~~with other species of up to 50 percent by number in~~
23 ~~landings greater than six tons and up to 100 percent for~~
24 ~~landings of six tons or less.~~

25 SEC. 17. Section 8550.5 of the Fish and Game Code is
26 amended to read:

27 8550.5. (a) A herring net permit granting the
28 privilege to take herring with nets for commercial
29 purposes shall be issued to licensed commercial
30 fishermen, subject to regulations adopted under Section
31 8550, as follows:

32 (1) To any resident of this state to use gill nets, upon
33 payment of a fee of two hundred sixty-five dollars (\$265).

34 (2) To any nonresident to use gill nets, upon payment
35 of a fee of one thousand dollars (\$1,000).

36 ~~(3) To any resident of this state to use round haul nets,~~
37 ~~upon the payment of a fee of four hundred dollars (\$400).~~

38 ~~(4) To any nonresident to use round haul nets, upon~~
39 ~~the payment of a fee of six hundred sixty dollars (\$660).~~

1 (b) The commission shall not require a permit for a
2 person to be a crewmember on a vessel taking herring
3 pursuant to this article.

4 SEC. 18. Section 8552.8 of the Fish and Game Code is
5 amended to read:

6 8552.8. (a) For purposes of this article, the
7 experience points for a person engaged in the herring roe
8 fishery shall be based on the number of years holding a
9 commercial fishing license and the number of years
10 having served as a crewmember in the herring roe
11 fishery, and determined by the sum of both of the
12 following:

13 (1) One point for each year in the previous 12 years
14 (prior to the current license year) that the person has
15 held a commercial fishing license issued pursuant to
16 Section 7852, not to exceed a maximum of 10 points.

17 (2) Five points for one year of service as a paid
18 crewmember in the herring roe fishery, as determined
19 pursuant to Section 8559, ~~using the type of year that is~~
20 ~~authorized under the herring permit to be obtained,~~
21 three points for a second year of service as a paid
22 crewmember, and two points for a third year as a paid
23 crewmember, beginning with the 1978–79 herring fishing
24 season, not to exceed a maximum of 10 points.

25 (b) The department shall maintain a list of all
26 individuals possessing the maximum of 20 experience
27 points and of all those persons holding two points or more,
28 grouped in a list by number of points. The list shall be
29 maintained annually and shall be available from the
30 department to all pointholders and to all herring
31 permittees. All pointholders are responsible ~~to provide~~
32 *for providing* the department with their current address
33 and ~~to verify for verifying~~ points credited to them by the
34 department.

35 (c) A herring permittee may use the department's list
36 and rely upon that list in making offers for transfer of his
37 or her permit until the date of the annual distribution of
38 the new list. On and after the date of the annual revision
39 of the list, the permittee shall use the new list.

(d) The point provisions in this section are for purposes of sale of a permit or transfer to a partner of a coowned permit.

SEC. 19. Section 8664.65 of the Fish and Game Code is repealed.

~~8664.65. The Legislature finds and declares that impacted fishermen are experienced in the use of gill and trammel nets and are capable of safely operating in the herring gill net fishery. Notwithstanding any other section in this code, the experience points requirement for eligibility to obtain a herring gill net permit contained in Section 8552.8 shall be waived for impacted fishermen from January 1, 1991, to January 1, 1996.~~

~~No herring gill net permit obtained by an impacted fisherman pursuant to this section may be transferred by that person during the first five years that permit is held by that person, except that, in the event of the death of a permittee, the permit may be transferred pursuant to Section 8104.~~

~~Impacted fishermen seeking to obtain herring gill net permits pursuant to this section shall be given preference in obtaining any low interest loans that may be offered by the state to commercial fishermen, in order to purchase herring gill net permits.~~

SEC. 20. Section 11019 of the Fish and Game Code is amended to read:

11019. The following constitutes Fish and Game District 11:

The waters and tidelands of San Francisco Bay to high-water mark bounded as follows: Beginning at the extreme westerly point of Point Bonita; thence in a direct line to the extreme westerly point of Point Lobos; thence around the shore line of San Francisco Bay to the foot of Powell Street; thence in a direct line northwesterly to Peninsula Point, the most southerly extremity of Belvedere Island; thence in a direct line westerly to the ~~shore end of the Northwestern Pacific Railroad Ferry slip~~ *easternmost point of the ferry dock* at Sausalito; thence southerly and westerly around the shore of San Francisco Bay to the point of beginning.

1 SEC. 21. Section 12002.3 of the Fish and Game Code
2 is amended to read:

3 12002.3. (a) Notwithstanding any other provision of
4 law, a violation of Section 7121 for the sale, purchase, or
5 receipt of fish taken ~~under a license issued pursuant to~~
6 ~~Section 7145 by a person required to be licensed pursuant~~
7 ~~to Section 7145~~ is punishable by a fine of not less than two
8 thousand dollars (\$2,000) ~~nor~~ or more than seven
9 thousand five hundred dollars (\$7,500), except as
10 provided in subdivisions (b), (c), and (d).

11 (b) If the violation in question involved the illegal sale
12 or purchase of abalone ~~taken under a license issued~~
13 ~~pursuant to Section 7145 by a person required to be~~
14 ~~licensed pursuant to Section 7145~~, the violation is
15 punishable by a fine of not less than fifteen thousand
16 dollars (\$15,000) ~~nor~~ or more than thirty thousand dollars
17 (\$30,000).

18 (c) If the violation in question involved a person who
19 knowingly purchased or received for commercial
20 purposes, fish taken ~~under the authority of a license issued~~
21 ~~pursuant to Section 7145 by a person required to be~~
22 ~~licensed pursuant to Section 7145~~, the violation is
23 punishable by a fine of not less than seven thousand
24 ~~dollars~~ five hundred dollars (\$7,500) ~~nor~~ or more than
25 fifteen thousand dollars (\$15,000).

26 (d) If the violation in question involved a person who
27 knowingly purchased or received for commercial
28 purposes, abalone taken ~~under the authority of a license~~
29 ~~issued pursuant to Section 7145 by a person required to be~~
30 ~~licensed pursuant to Section 7145~~, the violation is
31 punishable by a fine of not less than twenty thousand
32 dollars (\$20,000) ~~nor~~ or more than forty thousand dollars
33 (\$40,000).

34 SEC. 22. Section 12006.6 of the Fish and Game Code
35 is amended to read:

36 12006.6. Notwithstanding Section 12000 or 12002.8,
37 and in addition to Section 12009, and notwithstanding the
38 type of fishing license or permit held, if any person is
39 convicted of a violation of Section 5521 or 5521.5, and the
40 offense occurs in an area closed to the taking of abalone

1 for commercial purposes north of Point Lobos in District
2 10, ~~and the person takes or possesses 36 or more abalone,~~
3 that person shall be punished by all of the following:

4 (a) A fine ~~of~~ *equal to* five times the market value of the
5 abalone taken or in possession, or ten thousand dollars
6 (\$10,000), whichever is greater.

7 (b) The court shall order the department to
8 permanently revoke, and the department shall
9 permanently revoke, the commercial fishing license and
10 any commercial fishing permits of that person. The
11 person punished under this subdivision shall not,
12 thereafter, be eligible for any license or permit to take or
13 possess fish for sport or commercial purposes, including,
14 but not limited to, a commercial fishing license or a sport
15 fishing or sport ocean fishing license. Notwithstanding
16 any other provision of law, the commercial license or
17 permit of a person arrested for a violation punishable
18 under this section may not be sold, transferred, loaned,
19 leased, or used as security for any financial transaction
20 until disposition of the charges is final.

21 (c) Any vessel, diving or other fishing gear or
22 apparatus, or vehicle used in the commission of an offense
23 punishable under this section shall be seized, and shall be
24 ordered forfeited in the same manner prescribed for nets
25 or traps used in violation of this code, *as described* in
26 Article 3 (commencing with Section 8630) of Chapter 3,
27 or in the manner prescribed in Section 12157.

28 (d) Not less than 50 percent of the revenue deposited
29 in the Fish and Game Preservation Fund from fines and
30 forfeitures collected pursuant to this section shall be
31 allocated for the support of the Special Operations Unit
32 of the Wildlife Protection Division of the department and
33 used for law enforcement purposes.

34 SEC. 23. Section 12009 of the Fish and Game Code is
35 amended to read:

36 12009. (a) Notwithstanding Section 12000, and
37 except as provided in Section ~~8342~~ *12006.6*, the maximum
38 punishment for a violation of any provision of Section
39 5521 or 5521.5, or any regulation adopted pursuant
40 thereto, or of Section 7121 involving abalone, is a fine ~~of~~

1 *equal to five times the market value of the abalone taken,*
2 *or ten thousand dollars (\$10,000), whichever is greater,*
3 *imprisonment in the county jail for a period not to exceed*
4 *one year state prison for not more than three years, the*
5 *revocation of any commercial and sport fishing licenses*
6 *issued by the department for a period not to exceed 10*
7 *years, or any combination of these penalties.*

8 (b) Notwithstanding any other provision of law, the
9 money collected from any fine or forfeiture imposed or
10 collected for the taking of abalone for any purpose other
11 than for profit in violation of this article or any other
12 provision of law shall be deposited as follows:

13 (1) One-half in the Abalone Restoration and
14 Preservation Account.

15 (2) One-half in the county treasury of the county in
16 which the violation occurred.

17 SEC. 24. Section 12157 of the Fish and Game Code is
18 amended to read:

19 12157. (a) Except as provided in subdivision (b), the
20 judge before whom any person is tried for a violation of
21 any provision of this code, or regulation adopted pursuant
22 thereto, may, upon the conviction of the person tried,
23 order the forfeiture of any device or apparatus that is
24 designed to be, or is capable of being, used to take birds,
25 mammals, fish, reptiles, or amphibia and that was used in
26 committing the offense charged.

27 (b) The judge shall, if the offense is punishable under
28 Section 12002.3 or 12008 of this code or *under* subdivision
29 (c) of Section 597 of the Penal Code, order the forfeiture
30 of any device or apparatus that is used in committing the
31 offense, including, but not limited to, any vehicle that is
32 used or intended for use in delivering, importing, or
33 exporting any unlawfully taken, imported, or purchased
34 species.

35 (c) The judge may, for conviction of a violation of
36 Section 2000 relating to *abalone*, deer, elk, antelope, feral
37 pigs, European wild boars, black bears, and brown or
38 cinnamon bears, order forfeiture of any device or
39 apparatus that is used in committing the offense,

1 including, but not limited to, any vehicle used or intended
2 for use in committing any of those offenses.

3 In considering an order of forfeiture under this
4 subdivision, the court shall take into consideration the
5 nature, circumstances, extent, and gravity of the
6 prohibited act committed, the degree of culpability of the
7 violator, the property proposed for forfeiture, and other
8 criminal or civil penalties imposed on the violator under
9 other provisions of law for that offense. The court shall
10 impose lesser forfeiture penalties under this subdivision
11 for those acts that have little significant effect upon
12 natural resources or the property of another and greater
13 forfeiture penalties for those acts that may cause serious
14 injury to natural resources or the property of another, as
15 determined by the court.

16 It is the intent of the Legislature that forfeiture not be
17 ordered pursuant to this subdivision for minor or
18 inadvertent violations of Section 2000, as determined by
19 the court.

20 (d) Any device or apparatus ordered forfeited shall be
21 sold, used, or destroyed by the department.

22 (e) The proceeds from all sales under this section, after
23 payment of any valid liens on the forfeited property, shall
24 be paid into the Fish and Game Preservation Fund. A lien
25 in which the lienholder is a conspirator is not a valid lien
26 for purposes of this subdivision.

27 (f) The provisions in this section authorizing or
28 requiring a judge to order the forfeiture of a device or
29 apparatus also apply to the judge, referee, or traffic
30 hearing officer in a juvenile court action brought under
31 Section 258 of the Welfare and Institutions Code.

32 (g) For purposes of this section, a plea of nolo
33 contendere or no contest, or forfeiture of bail, constitutes
34 a conviction.

35 (h) Neither the disposition of the criminal action other
36 than by conviction nor the discretionary refusal of the
37 judge to order forfeiture upon conviction impairs the
38 right of the department to commence proceedings to
39 order the forfeiture of fish nets or traps pursuant to
40 Section 8630.



1 SEC. 25. Notwithstanding Section 17610 of the
2 Government Code, if the Commission on State Mandates
3 determines that this act contains costs mandated by the
4 state, reimbursement to local agencies and school
5 districts for those costs shall be made pursuant to Part 7
6 (commencing with Section 17500) of Division 4 of Title
7 2 of the Government Code. If the statewide cost of the
8 claim for reimbursement does not exceed one million
9 dollars (\$1,000,000), reimbursement shall be made from
10 the State Mandates Claims Fund.

